

**MEMORANDUM OF AGREEMENT  
BETWEEN SANTA FE COUNTY AND THE CITY OF ESPAÑOLA**

**THIS MEMORANDUM OF AGREEMENT** (hereinafter, "Agreement") is entered on this the \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and the **CITY OF ESPAÑOLA**, (hereinafter referred to as the "City") and collectively referred to as the "Parties".

**RECITALS**

**WHEREAS**, in the spirit of cooperation, mutual respect and service to the residents of Santa Fe County and the City of Española, this Agreement confirms the Parties' commitment and mutual cooperation which recognizes that the partnering activities between government entities may produce community and constituency benefits what might be produced independently; and

**WHEREAS**, this Agreement is exempt from the provision of the Procurement Code in accordance with Section 13-1-98(A) NMSA 1978; and

**WHEREAS**, each party has a Center that is engaged in providing emergency services as a 911 Public Safety Answering Point (PSAP); and

**WHEREAS**, each party understands that the concept of the Emergency 911 system is to provide for the prompt dispatch of all calls for assistance by the public; and

**WHEREAS**, topography and boundaries between the jurisdictions are such that mobile telephone signals can be received by either of the Centers at any given time; and

**WHEREAS**, the Parties desire to work together to provide comprehensive, cooperative and overlapping 911 services for the safety of both the public served and the emergency response personnel in both jurisdictions; and

**WHEREAS**, the City serves as Fiscal Agent for the Española/Rio Arriba E-911 Center PSAP, a separate entity.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**1. SCOPE OF UNDERSTANDING**

The City, serving as fiscal agent for the Española/Rio Arriba E-911 Center PSAP, shall utilize Fiscal Year 2017 funding for services related to the operational expenses of the Española/Rio Arriba E-911 Center PSAP.

**2. COMPENSATION**

A. During the term of this Agreement, the City shall invoice the County for expenses incurred for the period of July 1, 2016 to June 30, 2017. The maximum compensation payable to the City for expenses incurred in fiscal year 2017 is \$45,000 inclusive of NM gross receipts tax.

B. Payment by the County shall be made upon a receipt of a detailed certified invoice from the City supporting operational costs incurred by the Española/Rio Arriba E-911 PSAP. Thirty business days shall be allowed for payment after receipt of the invoice.

C. Payment under this Agreement shall not foreclose the right of the County to recover any excess or illegal payment(s).

**3. EFFECTIVE DATE TERM AND TERM**

This Agreement shall become effective upon the date of last signature by the Parties and shall terminate no later than July 1, 2017, unless earlier terminated pursuant to Section 4 (Termination) or Section 14 (Appropriations).

**4. TERMINATION**

A. Termination of Agreement. This Agreement may be terminated by the County upon written notice to the other party at least 30 days prior to the intended date of termination. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

B. Termination of Agreement for Cause. If a party fails to fulfill in a timely and proper manner its obligations under this Agreement, or if a party violates any of the covenants, agreements, or stipulations of this Agreement, the non-breaching party shall thereupon have the right to suspend or terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof.

Notwithstanding the above, no party shall be relieved of liability to the other party for damages sustained because of any breach of the Agreement.

**5. PERSONNEL**

A. The City represents that it has, or will secure at its own expense, all personnel required to perform all of the services required of it under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the County.

B. All services required hereunder will be performed by the City and the Española/Rio Arriba E-911 Center PSAP and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

**6. ASSIGNMENT**

The City shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

**7. SUBCONTRACTING**

The City shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County.

**8. NO THIRD-PARTY BENEFICIARIES**

This Agreement was not intended to and does not create any rights in any persons or party not a party to this Agreement.

**9. RELEASE**

Final payment of the amounts due under this Agreement shall operate as a release of the County, its officers and employees, and Santa Fe County from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1, et. Seq., NMSA 1978, as amended.

**11. AMENDMENT**

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the Parties hereto.

**12. INTEGRATION CLAUSE**

This Agreement incorporates all the covenants and understandings the Parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this Agreement. No prior covenants or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**13. APPLICABLE LAW; VENUE**

This Agreement shall be construed in accordance with the laws of the State of New Mexico. The City and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.

**14. APPROPRIATIONS AND AUTHORIZATIONS**

This Agreement is contingent upon sufficient appropriations and authorization being made by Santa Fe County Board of County Commissioners and if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice by the County to the City. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the City for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of funds until such time as they are programmed, budgeted, encumbered and approved for expenditures by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for fulfillment of this Agreement shall be final and not subject to challenge by the City.

**15. FACSIMILE SIGNATURES**

The Parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

**16. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, §41-4-1, et. seq.

**17. PROHIBITED ACTIVITY**

The City is prohibited from using funds provided herein or personnel employed in the administration of this Agreement for political activities, sectarian or religious activities; lobbying, or political patronage.

## **18. RECORDS AND FINANCIAL AUDIT**

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the City agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

B. To extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the City also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this subcontract; (ii) to allow the County or its designee to audit such books and records in accordance with GAAP.

## **19. PENALTIES FOR VIOLATIONS OF LAW**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

## **20. EQUAL OPPORTUNITY COMPLIANCE**

The City agrees to abide by all federal and state laws, rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the City assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or otherwise subjected to discrimination under any activity performed under this Agreement. If the City is found not be in compliance with these requirements during the life of this Agreement, the City agrees to take appropriate steps to correct these deficiencies.

## **21. INVALID TERM OR CONDITION**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**22. NOTICES**

Any notice required by this Agreement shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

COUNTY: Katherine Miller, County Manager  
Santa Fe County  
P. O. Box 276  
Santa Fe, New Mexico 875010-0276

CITY: Mark Trujillo, City Manager  
City of Española  
405 N. Paseo de Oñate  
Española, New Mexico 87532

**23. SURVIVAL**

The provisions of the following paragraphs shall survive the termination of this Agreement: RECORDS AND FINANCIAL AUDIT; RELEASE; APPLICABLE LAW, VENUE; NO THIRD PARTY BENEFICIARIES; SURVIVAL.

**THIS SPACE LEFT INTENTIONALLY BLANK**

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the date written below.

**SANTA FE COUNTY:**

\_\_\_\_\_  
Katherine Miller, County Manager


\_\_\_\_\_  
Date

**Approved as to Form:**

  
\_\_\_\_\_  
Gregory S. Shaffer, County Attorney

4-12-17  
\_\_\_\_\_  
Date

**Finance Department**

  
\_\_\_\_\_  
Don D. Moya, Finance Director

4-12-17  
\_\_\_\_\_  
Date

**CITY OF ESPAÑOLA**

\_\_\_\_\_  
Mark Trujillo, City Manager

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
Frank Coppler, City Attorney

\_\_\_\_\_  
Date

**Finance Department:**

\_\_\_\_\_  
Jessica Ortiz, Finance Director

\_\_\_\_\_  
Date

